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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Request for Reimbursement of]

FILE: B-195851

DATE: October 29, 1980

MATTER OF: ^{PP} Thomas A. Shaver - [Miscellaneous and
Transportation Expenses]

- DIGEST: 1. An employee was transferred from Germany to United States. When he terminated lease on his German residence he was required to forfeit his security deposit. The prevailing local custom was that the departing tenant was required to defray the cost of finding a new tenant and cost of redecorating. Expense was a lease termination expense and not reimbursable since both duty stations were not in United States or other specified areas. Nor is expense reimbursable as miscellaneous expense because miscellaneous expense allowance cannot be used to cover expenses where reimbursement is specifically denied elsewhere in regulations.
2. Employee being transferred from Germany to United States may not, at that time, be reimbursed under miscellaneous expenses for nonrefundable telephone deposit paid when transferred to Germany. That amount was reimbursable at the time it was paid. Employee also may not include in miscellaneous expenses cost of auto registration paid after initial year at new duty station since those fees are part of employee's everyday cost of living.
3. Employee transferred from Germany to United States may be reimbursed for full cost of commercial fare for flight because his travel orders were not annotated to restrict him to a military flight as required by 2 JTR before reimbursement may be limited.

The issues presented here arise from the transfer of an employee from Germany to Fort Meade Maryland,

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and concern reimbursement of miscellaneous expenses and transportation costs. The amounts sought to be reimbursed under miscellaneous expenses, including a security deposit forfeited under the terms of a lease may not be paid, but the employee may be paid the full commercial fare for his and his wife's trans-Atlantic flight.

Mr. Thomas A. Shaver, an employee of the Department of Defense (DOD), was transferred from Frankfurt, Germany, to Fort Meade, Maryland, under a travel order issued September 11, 1978. The questions before us were submitted as a request for an advance decision by Mr. W. Smallets, Finance and Accounting Officer, Central Security Service, of the National Security Agency (NSA). The submission was forwarded to us by the DOD Per Diem, Travel and Transportation Allowance Committee and was assigned PDTATAC Control No. 79-29.

The issues presented fall into two distinct categories, miscellaneous expenses and transportation expenses. We will deal with the issues in that order and will set out the facts relevant to each issue with that issue.

Miscellaneous Expenses

The submission presents two specific questions relating to miscellaneous expenses, which are:

"a. Is the employee's claim for the forfeited rental security deposit reimbursable as a miscellaneous expense allowance?

"b. Most leases within CONUS contain a forfeiture clause to cover damage over and above that resulting from normal usage. We have never seen that clause in any foreign lease received in this office. Therefore, would the reason for the forfeiture have any bearing on whether the forfeited deposit is reimbursable?"

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These questions arise from the forfeiture by Mr. Shaver of his security deposit when he terminated the lease on his residence in Germany. The lease began on September 1, 1973, for a term of 1 year. The original lease is in German, but we have been provided with a translation of relevant portions. The lease provides that it will be extended for 2-month intervals unless notice is given within certain specified times. The times vary from 7 months notice if less than 5 years have passed since the beginning of occupancy to 12 months when 10 years have passed. Under the terms of the lease a deposit is due when the lease is signed. The amount of the security deposit was \$605.40.

In a memorandum for the record dated April 1, 1979, Mr. Shaver explains why his security deposit was not returned to him:

"* * * This deposit was retained by my landlady for expenses she had to pay to find suitable tenants and for improvements the new tenants required. I had no choice but to pay this amount. As was explained to me when I signed the lease in 1973 it is German law and custom for the renter to bear the responsibility and cost for finding a replacement tenant suitable to the landlord and to modify the quarters to suit the new tenants. As my landlord did not want personnel associated with the U.S. military to occupy my quarters after I departed, she arranged for a realtor to find new tenants acceptable to her. Additionally, I checked with the F207 admin officer and he said it was his opinion that I would be able to obtain reimbursement for this expense. This opinion was based on reading of NSA/CSS PMM 30-2 Chapter 730, C9000 - Chapter 9 'Miscellaneous Expense Allowance Incident to Relocation of Household.' The intent of the writing in this chapter clearly indicates that expenses that were solely related to a

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PCS move would be reimbursed. Had I not taken a tour overseas or once established had not been ordered to leave I would not have had to bear this extra expense * * *."

In the submission it is then contended that the forfeited security deposit should be treated in the same manner as was a forfeited earnest money deposit in 55 Comp. Gen. 628 (1976). In that case and several others, we held that, when an employee has contracted to purchase a new residence and paid an earnest money deposit, but is prevented from completing the purchase because he is transferred for the convenience of the Government and forfeits the earnest money deposit, then he may include the amount of the forfeited deposit as an item to be reimbursed under the miscellaneous expense authority of 5 U.S.C. § 5724a(b) (1976).

The expenses of settling an unexpired lease at a transferred employee's old duty station are reimbursable under 5 U.S.C. § 5724a(a)(4) (1976), if both the old and new duty stations are in the United States or other specified areas. 47 Comp. Gen. 93 (1967). This is recognized in the submission, as is the fact that the same geographical restriction does not apply to reimbursement of miscellaneous expenses. B-163113, June 23, 1968.

There are, however, other restrictions on the payment of miscellaneous expenses. In section 2-3.1(c) of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973), costs that are not includable are listed. The first three general exclusions listed are:

"* * * This allowance shall not be used to reimburse the employee for costs or expenses incurred which exceed maximums provided by statute or in these regulations; costs or expenses that he incurred but which are disallowed elsewhere in these regulations; costs reimbursed under other provisions of law or regulations * * *."

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We believe that these exclusions govern Mr. Shaver's situation. [The retention of the security deposit by the landlord for the reasons given by Mr. Shaver was incident to the termination of the lease and was, therefore, a cost incurred incident to that termination.] See Matter of Richard E. Minella, B-186507, December 22, 1976, and Matter of Waldean D. Asheim, B-181435, February 12, 1975. [As a lease termination expense, it is not reimbursable since one duty station was outside of the United States or the other qualifying areas.]

This forfeiture is distinguishable from the forfeiture of an earnest money deposit under the terms of a real estate purchase contract. Where a purchase contract has not been consummated, expenses the employee incurs in settling his obligations under the contract would not qualify for reimbursement under 5 U.S.C. § 5724a(a)(4). They are not expenses incurred in selling a residence and could not be reimbursed as residence transaction expenses even if the geographic conditions were satisfied. As such, they are not costs "disallowed elsewhere in these regulations." Since they are not otherwise covered by the regulations, they may be included as miscellaneous expenses. In contrast, the security deposit forfeited by Mr. Shaver is the type of expense that may be reimbursed as a lease termination expense if the transfer meets the geographic conditions. Because the regulations specifically preclude reimbursement where the old duty station is not in the United States or other designated area, the forfeited amount is not includable as a miscellaneous expense.

[Accordingly, question a is answered in the negative and Mr. Shaver may not be reimbursed for the forfeited deposit.] To the extent that question b refers to leases of residences situated overseas, the reason for the forfeiture is not relevant and the forfeited amount may not be reimbursed. Where both duty stations are in the United States or other qualifying areas, whether a forfeited security deposit may be reimbursed depends upon all of the facts and circumstances of each case.]

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Before dealing with the claim for transportation expenses for Mr. and Mrs. Shaver, we will comment on two other points raised in the submission, but not specifically posed as questions for advance decision.

Mr. Shaver also sought reimbursement under the miscellaneous expenses allowance for an unrefunded telephone installation charge and automobile registration fees for each year of his tour of duty in Germany. The agency denied reimbursement of both of these items. The installation charge was denied on the basis that it was incurred when Mr. Shaver was transferred to Germany, at which time he was reimbursed the maximum allowable, \$200, where no itemization is submitted. The automobile registration fees were disallowed on the grounds that only the first year's fees are allowable as part of the miscellaneous expenses at the time of the transfer to the new station, and the maximum unitemized amount was reimbursed at that time.

We agree with both of those rulings. Installation fees and nonrefundable deposits are reimbursable at the time an employee incurs them, i.e., when he transfers to the duty station. Matter of Woodrow W. Williams, Jr., B-190209, July 13, 1978. Automobile registration fees beyond those incurred when initially bringing the vehicle into a new jurisdiction are part of an employee's everyday living expenses and are not reimbursable as expenses incurred incident to a transfer. Matter of Walter v. Smith, B-186435, October 13, 1977.

Transportation Expenses

When Mr. Shaver's travel orders were issued on September 11, 1978, he was authorized to travel by Government or commercial means, by rail, bus, or air. "Cat Z" fare was also authorized. One other block was available but not marked, that was mode of transportation "to be determined by Transportation Officer." Travel via Baltimore, Maryland, or Washington, D.C., was authorized.

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There was no indication on the travel order that a reservation had been made for Mr. Shaver on any particular type of flight or on any particular flight. Travel was to take place on or about October 19, 1978.

Mr. Shaver states that he was advised that a "Cat Z" reservation would be made for him and his wife to fly on Pan American on October 19. He further states that he continued to work and to train his replacement until the day before he was scheduled to depart. At that time he was advised that the Transportation Officer would not issue "Cat Z" tickets for his trip.

Mr. Shaver then contacted the Transportation Officer and told him that he had no objection to traveling on a MAC flight, and requested that arrangements be made to get him to Fort Meade, Maryland. The Transportation Officer advised him that he could schedule Mr. Shaver only as far as McGuire Air Force Base, New Jersey, and that Mr. Shaver would have to arrange his own transportation from there. In the original materials it was not clear whether Mr. Shaver was then told that a specific reservation had been made for him. We have been informally advised that at the time Mr. Shaver spoke to the Transportation Officer no reservation for him had been made. At some later time reservations for a flight on October 19, 1978, were made for Mr. Shaver and his wife. They did not use those reservations.

Following his conversation with the Transportation Officer, Mr. Shaver obtained a travel advance and purchased tickets on the Pan American flight that departed October 19. In large part, Mr. Shaver's reasons for traveling by commercial air carrier related to the practical problems that resulted from the fact that he was not notified of the availability of MAC service until the day before his scheduled departure. Mr. Shaver felt that it was necessary for him to arrive on the schedule that had already been arranged. Along the same line, he felt compelled to travel as he did since the transportation officer could neither provide nor guarantee a complete, scheduled itinerary to Fort Meade,

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and could not provide him with a reasonable assurance that his family would be notified of his changed plans. He felt that the actions of the Government in changing plans at the last possible moment, even though the travel orders had been issued more than a month prior to his scheduled departure, were unfair and irresponsible. He had packed and prepared to travel on a commercial flight and his baggage contained items not permitted on a military flight.

The submission raises the following specific questions concerning Mr. Shaver's transportation expenses.

"c. Is the information contained in attachments 7 and 8 [messages confirming that a MAC reservation had been made for Mr. Shaver], which we view as constituting the administrative record, sufficient to deny reimbursement of return transportation costs in view of the payment prohibition contained in the Joint Travel Regulation, Volume#2, C5100-2?

"d. If payment is prohibited, would the prohibition apply to the employee and his dependent spouse or to the employee only?

"e. If the prohibition applies to the employee only, could the employee be reimbursed the cost of the cat Z fare for the travel of his dependent spouse or only the cost of MAC airlift travel?

"f. Would the type of plane for the MAC travel, Military Airlift Command plane or MAC leased space on leased civilian passenger aircraft, have any bearing on the answers to the questions in paragraph 7.c. through e.?"

Paragraph C5100-2 of Volume 2 of the Joint Travel Regulations (2 JTR) provides, in pertinent part, that:

"SPACE RESERVED ON MILITARY AIRLIFT
COMMAND OR MILITARY SEALIFT COMMAND.

Reimbursement on a constructive or other basis will not be allowed for that portion of the routing involved in connection with the continental United States when actual space reservation on available Military Airlift Command or Military Sealift Command facilities is made and indicated in a travel order, and a traveler then refuses such available transportation for personal reasons other than acceptable reasons, and elects to travel by another transportation facility or a different or circuitous route. * * *" (Emphasis added.)

This section requires that a traveler be notified of the existence of or the intent to make a MAC reservation on his travel order. Here, Mr. Shaver's travel order contained no such notification. In fact, he received no notice, of any type, of that intent until the day before he was to fly to the United States.

Paragraph C3105(1)(8) of 2 JTR "PERMANENT DUTY TRAVEL OUTSIDE CONTINENTAL UNITED STATES," is also relevant here. That paragraph provides that:

"1. GENERAL. Travel orders for permanent duty travel outside continental United States will contain the same basic information prescribed in par. C3151, plus the inclusion of the following:

* * * * *

"8. statement prohibiting the use of commercial modes when reservations are made for travel by Government transportation facilities (see par. C5100) * * *."

Thus, the governing regulations require that a traveler be placed on notice by his travel orders that a reservation on a military aircraft has been or will be made for

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him and those traveling with him. No such restriction was indicated in Mr. Shaver's travel orders.

Since Mr. Shaver was not required to use a military flight because his travel order was not so annotated, and the Transportation Officer refused to issue a "Cat Z" ticket for Mr. Shaver's use, he may be reimbursed for the full cost of his and his wife's commercial flight which was authorized by the travel order.

In answer to the specific questions raised in the submission, the information in the record is not sufficient to deny reimbursement to Mr. Shaver, and he may be reimbursed for the full cost of his travel. Because of this answer, the remaining questions need not be considered.



For the Comptroller General
of the United States